

Fair Labor Standards Act New Overtime Rule

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Disclaimer

- The information being presented is for general information purposes only to permit you to learn more about the discussed topics. The information presented is not legal advice and is not to be acted on as such.

Fair Labor Standards Act (FLSA)

- Minimum Wage: \$7.25 per hour
- Overtime: 1 ½ times the regular rate of pay after 40 hours in a workweek

Exemptions from Overtime

- 4 primary exemptions
 - Executive employees
 - Administrative employees
 - Professional employees
 - Highly compensated employees
- Additional exemptions can be found in N.D.A.C. § 46-02-07-02(4)

Executive Exemption

- Employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- Employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- Employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption

- Employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

- **Learned professional employee exemption:**
 - Primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
 - The advanced knowledge must be in a field of science or learning; and
 - The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
- **Creative professional employee exemption:**
 - Primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Minimum salary for Exemptions to apply

- Current federal regulations require "administrative," "executive," and "professional" employees receive at least \$455 per week (\$23,660 per year)
- New rule increases this floor to \$913 per week (\$47,476 per year)
 - Effective December 1, 2016

Highly Compensated Employees

- A "highly compensated" employee is one who:
 - Paid total annual compensation of \$100,000 or more (which must include at least \$455/week on salary or fee basis),
 - Primary duties consist of office or non-manual work, AND
 - Customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee
- New rule increases this floor to from \$100,000 to \$134,004 per year (which must include \$913/week)
 - Effective December 1, 2016

Summary of New Rule

- Effective December 1, 2016
 - Increases standard salary level (from \$455 to \$913 per week) for executive, administrative and professional exemptions
 - Increases total annual compensation requirement for highly compensated employees (from \$100,000 to \$134,004 per year)
- Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020

Misclassification of employees

- Employers frequently misclassify employees as exempt from overtime
 - ND Dept of Labor sees numerous cases involving overtime issues (142 cases in 2015)
- Costly – employees can recover up to two years of overtime pay (possibly three)

Most employees won't be affected by New Rule

- Hourly workers – still will receive hourly wage (at least \$7.25/hour) and overtime at 1 ½
- Workers with regular workweeks of 40 or fewer hours
- Public employees who have comp time arrangement
- Police & fire employees who regularly work hours that conform to longer work periods
- Police & fire employees in small agencies (fewer than 5)
- Elected officials who aren't subject to civil service laws (not covered by FLSA)

Comp Time for Non-exempt Employees

- Cities may arrange for their employees to earn comp time instead of cash payment for overtime hours.
- The employee has to be aware of this before performing the work (i.e., written authorization of receipt of policy)
- Comp time must be provided at rate of 1 ½ hours for each overtime hour worked
 - So if work 44 hours in a week, they get 6 hours (4 x 1.5) comp time
- When used, comp time paid at regular rate of pay
- May accrue up to 240 hours of comp time for most employees
- Law enforcement, fire protection, and emergency response personnel, as well as seasonal employees may accrue up to 480 hours of comp time
- Must be allowed to use comp time on date requested unless doing so would "unduly disrupt" operations of city

Fire & Police "Work Periods"

- Employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis, rather than the usual 40-hour workweek of the FLSA.
- A "work period" may be from 7 consecutive days to 28 consecutive days in length.
- Overtime required when employee's hours worked in the work period exceed the maximum hours outlined in a formula in the Department's regulations.
 - For example, for a law enforcement employee who works a 14-day work period, the Department's regulations provide that she must receive overtime compensation after working 86 hours in the work period. See FLSA Fact Sheet #7 and Fact Sheet #8 for more information.

Fire & Police Small-Agency Exemption

- FLSA provides exemption from overtime for fire protection or law enforcement employees, if employed by agency that employees fewer than 5 fire protection or law enforcement employees, respectively.

Want more info?

- Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees, May 2016
 - <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>
- Overtime Final Rule and State and Local Governments
 - <https://www.dol.gov/sites/default/files/overtime-government.pdf>

Questions?

- Contact Department of Labor and Human Rights at:
 - Phone: (701) 328-2660
 - Toll-Free: (800) 582-8032
 - Web: www.nd.gov/labor
 - Email: labor@nd.gov
- Contact Private Attorney
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